

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**FILED**

MAY 21 2004

CLERK'S OFFICE  
U.S. DISTRICT COURT  
EASTERN MICHIGAN

In Re:

**DOW CORNING CORPORATION,**

**Debtor.**

Case No. 01-CV-71843-DT  
Bankruptcy Case No. 95-20512  
Chapter 11  
HON. DENISE PAGE HOOD

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**ORDER ON MOTION BY PLAN PROPONENTS  
TO MODIFY PLAN PROVISIONS FOR CLASSES 4 and 4A**

This matter is before the Court on the Plan Proponents' Motion to Modify Plan Provisions for Classes 4 and 4A. The parties have resolved the matter except for the amount of pendency interest the Debtor will pay as soon as practicable after the Effective Date.<sup>1</sup> The Debtor is willing to pay in cash the undisputed portions of the Class 4 claimants' claims. The Class 4 claimants argue that because this Court has ruled that the pendency rate at issue on those contracts with variable rates is fixed at the rate existing at the time the Petition was filed, that portion of the calculation is now an Allowed Claim and the Debtor must pay that amount. The disputed amount or the difference in the parties' pendency interest calculation is approximately \$60 million. A hearing was held on this matter on May 20, 2004.

The Plan provides that distributions shall be made only to the holders of Allowed Claims. (Joint Amended Plan, § 10.1) Until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive the consideration otherwise provided to the claimants under the

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<sup>1</sup> The Debtor and the Class 4 claimants submitted two proposed orders which the parties agreed to except for ¶ 3 of the proposed orders. Because the parties agree that payments of the undisputed amount will be made as soon as practicable after the Effective Date, the Class 4 claimants' Motion for Order Directing the Debtor to Make Interim Contributions is moot.

Plan. (Joint Amended Plan, § 10.1)

The pertinent definition of an "Allowed Claim" under the Plan includes all or a portion of a claim that has been agreed to by a claimant and the Debtor, that has been allowed by a Final Order or expressly allowed under the Plan. (Joint Amended Plan, § 1.3) "Disputed Claim" means any claim against the Debtor to which an objection is timely filed or listed in the Debtor's schedules and has not been resolved by Final Order. (Joint Amended Plan, § 1.51) "Final Order" means an order, judgment, ruling or decree issued by the Court, that has not been reversed, stayed, modified or amended *and* as to which no appeal is pending. (Joint Amended Plan, § 1.65)

The Debtor filed a notice of appeal from this Court's Order regarding the calculation of pendency interest due. Under §§ 1.3, 1.51 and 1.65 of the Plan, that portion of the pendency interest claim remains disputed and is not an Allowed Claim because that order has been appealed by the Debtor. Accordingly, under § 10.1 of the Plan, the Debtor is not required to distribute that portion of the claim because it remains a Disputed Claim. The Court enters the order in the form submitted by the Debtor as follows:

On May 20, 2004, the Motion by Plan Proponents to Modify Plan Provisions for Classes 4 and 4A (the "Motion to Modify") came on for hearing. The Court previously granted the Proponents' motion to consider the Motion to Modify on an expedited basis. The Court finds that notice of the Motion to Modify was fair and reasonable, complies with § 1127 of the Bankruptcy Code, and is approved. The Court further finds that no solicitation or reballoting of any class under the Plan is necessary or required by the Bankruptcy Code to effectuate the plan amendments that are the subject of the Motion to Modify. Based on the Court's review of the Motion to Modify, the related amendments to the Plan reflected in Exhibit "A" hereto (the "Plan Amendments") and the

arguments of counsel at the hearing, the Court finds that the Plan Amendments should be approved.

Accordingly, it is ORDERED that:

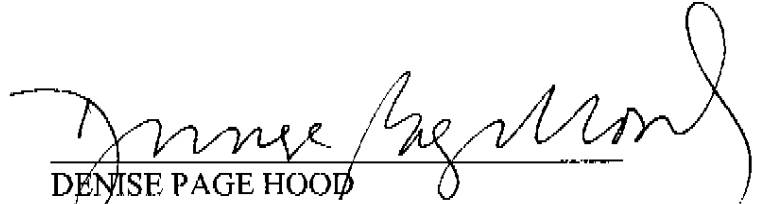
1. The Plan Amendments are approved and the Plan is modified to incorporate the changes reflected in the blacklined copy of the Plan attached hereto as Exhibit "A." The Proponents are authorized to take such steps as are reasonably necessary or desirable in their judgment to implement the Plan as so modified, including obtaining financing for payments thereunder as set forth in the Motion to Modify. As modified pursuant to this Order and prior rulings in these proceedings, the Plan is confirmed.

2. The Effective Date of the Plan is June 1, 2004.

3. As soon as practicable after the Effective Date (and whether or not financing is obtained as contemplated by the Motion to Modify), the Debtor shall pay to Class 4 claimants the undisputed portions of their claims, including undisputed portions of pendency interest, at the amounts set forth by the Debtor in its Statement By Dow Corning Corporation Regarding Calculation of Pendency Interest Due, filed on April 14, 2004.

4. Confirmation of the Plan as modified pursuant to this Order, payment of the undisputed amounts of the Class 4 claims in accordance with the Plan as modified, and acceptance of such payments by Class 4 claimants is without prejudice to the existing objections, rights and remedies of all parties relating to disputes among the Debtor, the Commercial Committee and any Class 4 claimants regarding whether additional amounts are required to be paid in respect of Class 4 claims, including, without limitation, objections to and appeals from rulings in the case affecting the amount of pendency interest, fees, costs and expenses required to be paid pursuant to the Plan

or Section 1129 of the Bankruptcy Code. All such rights and remedies of all parties are expressly preserved with respect to the Plan as modified and confirmed pursuant to this Order.

  
DENISE PAGE HOOD  
UNITED STATES DISTRICT JUDGE

DATED: **MAY 21 2004**

## EXHIBIT “A”

**DATED:** ~~February 4, 1999.~~ June 1, 2004.

1.71 **“Government Payor”** means a Governmental Unit that has paid or provided medical benefits with respect to a Personal Injury Claim. For purposes of this definition, “Governmental Unit” shall include, without limitation and in addition to those entities identified in section 101(27) of the Bankruptcy Code, any governmental program that pays for claims by Physicians or Health Care Providers on behalf of Personal Injury Claimants who qualify to receive benefits under such program.

1.72 **“Government Payor Claim”** means any Other Claim asserted by a Government Payor.

1.73 **“Greater U.S.”** means the geographical areas comprised of the United States, Puerto Rico, any of the territories or possessions of the United States, and any United States military facility.

1.74 **“Health Care Provider”** means any Person, other than a Physician, that is a hospital, health care facility or like provider, or other health care professional.

1.75 **“Health Care Provider Claim”** means any Other Claim asserted by a Health Care Provider.

1.76 **“Health Insurer”** means a Person, including a health benefit plan, who provides or has provided payments, benefits or coverage pursuant to an insurance policy or program to any Claimant with respect to a Personal Injury Claim.

1.77 **“Health Insurer Claim”** means any Other Claim asserted by a Health Insurer.

~~1.78 **“Indenture”** means the master indenture between Reorganized DCC and the Indenture Trustee, containing terms and conditions usual and customary for instruments of that~~

~~type, under which, together with the Senior Note Supplemental Indenture and the Subordinated Note Supplemental Indenture, the Senior Notes and the Subordinated Notes will be issued.~~

~~1.79~~ ~~“Indenture Trustee” means the Person designated in the Indenture to serve as trustee for the holders of the Senior Notes and the Subordinated Notes.~~

~~1.80~~ ~~—~~1.78 **“Insurance Allocation Agreement”** means that agreement between the Debtor and Dow Chemical dated as of February 16, 1998, as thereafter amended.

~~1.81~~1.79 **“Insurance Company”** means any insurance company or insurance broker providing Insurance Coverage to DCC for liability arising from or related to Products Liability Claims.

~~1.82~~1.80 **“Insurance Coverage”** means the insurance coverage, not reduced to settlement proceeds, available to DCC with respect to Products Liability Claims under any Insurance Policy.

~~1.83~~1.81 **“Insurance Debtor Actions”** means all claims, causes of action and enforceable rights of DCC against any Insurance Company arising from or related to (a) any such Insurance Company's failure to provide Insurance Coverage under any Insurance Policy; (b) the refusal of any Insurance Company to compromise and settle any claim pursuant to any such Insurance Policy; or (c) the interpretation or enforcement of the terms of any such Insurance Policy.

~~1.84~~1.82 **“Insurance Debtor Action Recoveries”** means the rights of DCC to any and all proceeds, including any interest or income earned thereon, and other relief from (a) any award, judgment, relief, or other determination entered or made as to any Insurance Debtor Actions; (b) any and all amounts payable by a settling Insurance Company under any insurance



~~4.132~~4.130     **“Plan Documents”** means the ~~Indenture, the Senior Note Supplemental Indenture, the Subordinated Note Supplemental Indenture, the Settlement Facility Agreement,~~ the Dow Corning Settlement Program and Claims Resolution Procedures, the Litigation Facility Agreement, the Funding Payment Agreement, the Insurance Allocation Agreement, the Quebec Breast Implant Settlement Agreement, the Ontario Breast Implant Settlement Agreement, the B.C. Class Action Settlement Agreement, the Australia Breast Implant Settlement Option, the Domestic Health Insurer Settlement Agreement and all other documents and exhibits as the same may be amended, modified, supplemented, or restated from time to time, that aid in effectuating this Plan, which documents and exhibits shall be filed by the Proponents with the Court on or before the Plan Documents Filing Date.

~~4.133~~4.131     **“Plan Documents Filing Date”** means the date for the filing of the Plan Documents which shall be either (a) a date, as determined by the Proponents, that is as soon as practicable, but that in no event is later than 30 calendar days before the deadline for filing objections to confirmation of the Plan or (b) such other date (or dates) determined by the Court.

~~4.134~~4.132     **“Plan Documents Review Center”** means the offices of DCC located at 2200 W. Salzburg Road, Midland, Michigan, 48611, and such other location or locations designated by the Proponents, at which any party in interest may review the Plan Documents as filed.

~~4.135~~4.133     **“Plan Interest Rate”** means the interest rate for deferred payments under the Plan, which rate shall be determined, based upon then-existing market rates, as of the Effective Date.

~~4.153~~1.151    **“Retiree Benefit Claims”** means claims for payments to any Entity or Person for the purpose of providing or reimbursing payments for retired employees of Dow Corning and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability or death under any plan, fund, or program established by Dow Corning prior to the Petition Date.

~~4.154~~1.152    **“Secured Claim”** means any Claim, including interest, fees and charges as determined pursuant to section 506(b) of the Bankruptcy Code, against the Debtor that is (a) secured in whole or in part as of the Petition Date by a Lien on any of the assets or property of the Debtor, which Lien is valid, perfected and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law, but only to the extent of the value of the assets or property securing any such Claims, or (b) subject to setoff under section 553 of the Bankruptcy Code, but only to the extent of the amount subject to such setoff.

~~4.155~~ **“Senior Note Supplemental Indenture”** means the supplemental indenture to the Indenture under which, together with the Indenture, the Senior Notes will be issued.

~~4.156~~ **“Senior Notes”** means those promissory notes of the Reorganized Debtor to be issued under the Indenture, having the terms and conditions substantially as contemplated by **Exhibit “D”** hereto.

~~4.157~~1.153    **“Settlement Facility”** means the Claims resolution facility to be established in accordance with section 6.11.3 of this Plan pursuant to which the Claims of Settling Personal Injury Claimants will be satisfied.

~~1.171~~ **"Subordinated Note Supplemental Indenture"** means ~~the supplemental indenture to the Indenture under which, together with the Indenture, the Subordinated Notes will be issued.~~

~~1.172~~ **"Subordinated Notes"** means ~~those promissory notes to be distributed to the holders of Subordinated (Class 21) Claims, having a maturity date of the tenth anniversary of the Effective Date and bearing interest at the Plan Interest Rate (payable semi-annually in arrears).~~

~~1.173~~1.167 **"Subsidiaries"** means all of the subsidiary corporations of the Debtor.

~~1.174~~1.168 **"Tort Committee or Tort Claimants' Committee"** means the Official Committee of Tort Claimants, the committee appointed by the United States Trustee to represent the interests of Persons holding Personal Injury Claims in the Case, as such committee may be reconstituted from time to time.

~~1.175~~1.169 **"Unborn Breast Implant Claimants"** means the children born after the Confirmation Date to Breast Implant Users.

~~1.176~~1.170 **"Unmanifested Claim"** means a Personal Injury Claim of a Claimant who, as of the Effective Date, has not suffered any injury alleged to have been caused, in whole or in part, by a product of the Debtor.

~~1.177~~1.171 **"Unsecured Claim"** means any Claim against the Debtor, other than a Products Liability Claim, that is neither secured nor entitled to a priority under the Bankruptcy Code or any order of the Court, including, without limitation, any Claim arising from the rejection of an executory contract or unexpired lease under section 365 of the Bankruptcy Code and any Personal Injury Claim that was the subject of a prepetition Final Order or a legally enforceable settlement agreement.

## ARTICLE FIVE

### TREATMENT OF CLASSES IMPAIRED UNDER THE PLAN

5.1 Unsecured Claims—Class 4. Each Allowed Unsecured Claim in Class 4 shall include interest thereon from the Petition Date through the Effective Date at the Case Interest Rate, and such fees, costs and expenses (including prepayment penalties or liquidated damages), but only to the extent such fees, costs and expenses are Allowable under applicable law. Each holder of an Allowed Class 4 Claim will receive, as payment in full, on or as soon as practicable following the Effective Date, or if later, the Allowance Date, ~~the sum of (a) a cash payment equal to the lesser of 24% of each such holder's of its~~ Allowed Class 4 Claim ~~or a pro rata share of \$315.6 million and (b) Senior Notes in a principal amount equal to the balance of such holder's~~ Allowed Class 4 Claim. ~~The terms of the Senior Notes are set forth in Exhibit "D" to this Plan in full in cash.~~

In the event the Court determines that the treatment of Class 4 does not satisfy the requirements of either section 1129(a)(7) or 1129(b) (in the event confirmation is sought pursuant to section 5.18 of this Plan) of the Bankruptcy Code, the Proponents shall propose amendments to the Plan to ensure its compliance with the applicable requirements of section 1129 of the Bankruptcy Code, and thereafter request confirmation of the Plan, as amended. To the extent distributions in respect of any <sup>unsatisfied</sup> ~~disputed~~ portion of the Allowed Class 4 Claims are not made on the Effective Date, interest shall accrue on the unsatisfied portion of such Allowed Class 4 Claim from the Effective Date until the date ~~on which the~~ distribution is actually made in respect thereof at the ~~rate set for the initial issuance of Senior Notes under the Plan,~~ compounded ~~on each interest payment date under the Senior Notes so issued annual~~ <sup>annual</sup> rate of five

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percent (5%) <sup>per annum</sup> compounded semi-annually from the Effective Date of the Plan. All such interest shall be paid in cash at the time distributions in respect of such Claim are made. Such interest shall stop accruing on amounts <sup>distributed</sup> distributable under the Plan upon payment <sup>thereof</sup> of the ~~remaining Claim amounts~~ to the holder of the Class 4 Claim or to the agent or indenture trustee for such holder, regardless of the date on which such agent or indenture trustee actually remits such amount to such holder.

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5.2 **Prepetition Judgment Claims—Class 4A.** Unless a different treatment is agreed to by the Class 4A Claimant and the Debtor prior to the Confirmation Date, on the Effective Date, the post-confirmation injunction provided in the Confirmation Order shall be deemed modified to the limited extent required to allow the exhaustion of any post-judgment appellate activity in connection with any Prepetition Judgment Claim. In such appeals, the Litigation Facility will be substituted for the Debtor as a party thereto. The appeals shall be prosecuted in the appellate courts of the respective jurisdictions in which the judgments were entered. If the final resolution of the appeal is in favor of the holder of a Prepetition Judgment Claim, the amount of the judgment, as finally determined on appeal (whether by settlement, remittitur or affirmance), shall be treated and paid in cash ~~and Senior Notes~~ in the same manner as Allowed Class 4 Claims under the Plan. If any such case is settled prior to decision on appeal, the Reorganized Debtor shall receive a credit as payments are made ~~or notes are paid~~ against its obligations under the Funding Payment Agreement for all amounts paid by it in respect of such Claims. If the appeal results in an order remanding the matter for new trial as to liability and/or damages, the holder of the Prepetition Judgment Claim shall have her Claim resolved in accordance with the terms of the Litigation Facility Agreement. The limited modification of the

5.16 **Subordinated Claims—Class 21.** Each Subordinated Claim shall include interest accrued thereon after the Petition Date through the later to occur of the Effective Date or the Allowance Date at the Case Interest Rate, which total sum shall be the Allowed Subordinated Claim. Each Claimant holding an Allowed Subordinated Claim will receive, as soon as practicable following the Effective Date, or, if later, the Allowance Date, ~~a Subordinated Note in a principal amount equal to the amount of the Allowed Subordinated~~ payment of its Allowed Claim in full in cash.

5.17 **Holders of Interests—Class 24.** The Shareholders shall retain their Interests in the Reorganized Debtor.

5.18 **Cramdown.** If any impaired class of Claims fails to accept this Plan as required by section 1126 of the Bankruptcy Code or in accordance with voting procedures established by the Court, the Debtor shall have the right, independent of the Tort Committee, to request that the Court confirm this Plan in accordance with section 1129(b) of the Bankruptcy Code. The Tort Committee will support confirmation of this Plan in accordance with section 1129(b) as it relates to Classes 5 through 10.2 unless it reasonably determines that its fiduciary duty to its constituency as a whole requires it to oppose such confirmation.

## ARTICLE SIX

### **MEANS FOR IMPLEMENTATION OF PLAN**

6.1 **Litigation Protocol.** The procedures for resolving Claims of Non-Settling Personal Injury Claimants and other Claims that are not settled under the Plan are described in the Litigation Facility Agreement. In addition, the Litigation Facility Agreement provides that the Case Management Order has been approved by the parties and will be entered by the District

Secured Claims shall effect such setoffs on the Effective Date or, if later, the Allowance Date.

6.11.2 **Satisfaction of Allowed Unsecured Claims.** The Reorganized Debtor shall cause the distribution of cash, with respect to Allowed Claims in Class 3, ~~and cash and Senior Notes, with respect to~~ and Allowed Claims in Class 4 (and Class 4A, if applicable), to be made as provided in sections 4.3, 5.1 and 5.2 of this Plan.

6.11.3 **Satisfaction of Personal Injury Claims (Other than Claims in Classes 6A, 6B, 6C and 6D) and LTCI Other Claims.** Unless the Settlement Facility and the Litigation Facility shall have been earlier established, the Reorganized Debtor shall cause the Settlement Facility and the Litigation Facility to be established and shall deliver the Funding Payment Agreement (together with the initial cash payment of \$985 million plus any interest as provided by the Funding Payment Agreement) and the LTCI Indemnities in full release, satisfaction and discharge of the Personal Injury Claims and LTCI Other Claims.

6.11.4 **Satisfaction of Personal Injury Claims in Class 6A.** The Reorganized Debtor shall execute and deliver the Quebec Breast Implant Settlement Agreement (together with any payment[s] then due thereunder to the Quebec Class Action Fund).

6.11.5 **Satisfaction of Personal Injury Claims in Class 6B.** The Reorganized Debtor shall execute and deliver the Ontario Breast Implant Settlement Agreement (together with any payment[s] then due thereunder to the Ontario Class Action Fund).

6.11.6 **Satisfaction of Personal Injury Claims in Class 6C.** The Reorganized Debtor shall execute and deliver the B.C. Class Action Settlement Agreement (together with any payment[s] then due thereunder to the B.C. Class Action Fund).

6.11.7 **Satisfaction of Personal Injury Claims in Class 6D.** The Reorganized Debtor shall execute and deliver the Australia Breast Implant Settlement Option (together with any payment[s] then due thereunder to the Australia Breast Implant Optional Settlement Fund).

6.11.8 **Satisfaction of Other Claims Related to Implants.** If such Claims have been timely resolved or estimated for allowance, the Reorganized Debtor shall cause the distribution of cash ~~and Senior Notes~~ with respect to Allowed Claims of Non-Settling Co-Defendants in Class 11, and of Claimants in Classes 15 and 17 in accordance with sections 5.13.1 and 5.13.5 of this Plan.

6.11.9 **Satisfaction of Settling Domestic Health Insurer Claims.** Provided the Domestic Health Insurer Settlement Agreement has become effective, the Reorganized Debtor shall consummate the transactions contemplated by that agreement.

6.11.10 **Satisfaction of Allowed Subordinated Claims.** The Reorganized Debtor shall cause all Allowed Subordinated Claims to be satisfied in accordance with section 5.16 of this Plan.

6.11.11 **Amendment of Corporate Charter.** The Reorganized Debtor shall amend its corporate charter to prohibit the issuance of nonvoting equity securities.

6.11.12 **Contemporaneous Nature of Transactions at Closing.** All transactions consummated at the Closing shall be deemed to be contemporaneous



7.1.6 The Confirmation Order shall approve and provide for the implementation of the other Plan Documents;

7.1.7 The Confirmation Order shall effect the release of certain Claims and the injunction against the prosecution of the Released Claims against those third parties, including the Shareholder-Affiliated Parties, as described in sections 8.3 and 8.4 of the Plan, and shall provide for the channeling injunction with respect to Assumed Third Party Claims described in section 8.5 of the Plan; and

7.1.8 The Confirmation Order shall be in form and substance reasonably acceptable to the Proponents and the Shareholders.

7.2 **Conditions to the Effective Date.** Notwithstanding any other provision of the Plan or the Confirmation Order, the Effective Date shall not occur unless and until each of the following conditions shall have been satisfied or waived in accordance with section 7.3 of this Plan:

7.2.1 No timely-filed appeal shall have been taken from the Confirmation Order challenging, directly or indirectly, the validity and enforceability of the releases and injunctions described in sections 8.3 and 8.4 of the Plan and/or the limits of required funding as set forth in the Funding Payment Agreement for the release, satisfaction and discharge of all claims in Classes 5 through 19 of the Plan (collectively, the "**Release/Funding Issues**"), or, if such an appeal regarding any Release/Funding Issue shall have been filed, such appeal shall have been denied or dismissed and such releases and injunctions and such limits of required funding shall have been affirmed in all respects pursuant to a Final Order; and

7.2.2 The Debtor shall have received from the Internal Revenue Service ("IRS") a ruling reasonably satisfactory to Dow Corning and its tax counsel regarding the following matters: (i) the Depository Trust will be treated as a qualified settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder; (ii) the payments to be made with respect to Claims Allowed through the procedures provided therefor in the Litigation Facility will be fully deductible by the Reorganized Debtor at the time of (or before) each such disbursement; and (iii) such other matters as tax counsel for Dow Corning may reasonably require; and       

~~7.2.3 The Indenture shall have been qualified under the Trust Indenture Act of 1939, as amended, by the Securities and Exchange Commission.~~

7.3 **Waiver of Conditions.** Any condition set forth in sections 7.1 or 7.2 of this Plan may be waived by the Proponents and the Shareholders.

7.4 **Escrow of Payments to Settlement Facility Pending Appeal.** Notwithstanding section 7.2.1 of the Plan, in the event an appeal is filed from the Confirmation Order that does not raise a Release/Funding Issue and does not result in a stay of the effect of the Confirmation Order, Reorganized DCC shall consummate the Plan.

If the appeal does raise a Release/Funding Issue: (a) DCC and the Tort Committee will cooperate in seeking an expedited appeal thereof, and (b) if there is no stay of the Confirmation Order pending appeal, DCC shall timely pay to the Settlement Facility that portion of the initial cash payment of \$985 million and such other subsequently available funds which Reorganized DCC is obligated to pay under the terms of the Funding Payment Agreement.

withholding of applicable federal and state taxes. If the Court disallows or allows in a reduced amount any Disputed Unsecured Claim, any cash and accrued interest thereon otherwise distributable with respect to the disallowed Claim (or the disallowed portion thereof) will become property of the Reorganized Debtor and the affected Claimant shall have no further rights against the Debtor or the Reorganized Debtor with respect to such disallowed Claim or portion of such disallowed Claim.

10.2 **Distributions to Holders of Allowed Bank Loan Claims.** Distributions <sup>on or as soon as practicable</sup> provided for in this Plan on account of Allowed Bank Loan Claims shall be made, <sup>either (a) if following the Effective</sup> such agency relationship exists, to the agent bank for holders of Bank Loan Claims under the <sup>Date,</sup> applicable credit agreement for further distribution to such holders, or (b) if no agent bank exists, directly to the holders of Bank Loan Claims. Any such distribution made by an agent bank will be made pursuant to the applicable credit agreement. Notwithstanding anything to the contrary contained in this Plan, the delivery by or on behalf of the Reorganized Debtor to an agent bank of the consideration to be distributed under this Plan to holders of Allowed Bank Loan Claims arising pursuant to the agreement under which such agent bank serves in such capacity shall fully satisfy and discharge the Reorganized Debtor's obligations to distribute such consideration to such holders. ~~Senior Notes delivered to an agent bank pursuant to this section 10.2 will be issued in such denominations and registered in such names as may be requested by such agent bank in a writing delivered to the Debtor on the Effective Date.~~

10.3 **Distributions to Holders of Allowed Public Debt Claims.** Distributions provided for in this Plan on account of Allowed Public Debt Claims shall be made to the indenture trustee for holders of Public Debt Claims on or as soon as practicable following the

Effective Date for further distribution to such holders. Any such distribution made by an indenture trustee will be made pursuant to the applicable indenture. Notwithstanding anything to the contrary contained in this Plan, the delivery by or on behalf of the Reorganized Debtor to an indenture trustee of the consideration to be distributed under this Plan to holders of Allowed Public Debt Claims arising pursuant to the indenture under which such indenture trustee serves in such capacity shall fully satisfy and discharge the Reorganized Debtor's obligations to distribute such consideration to such holders. ~~Senior Notes delivered to an indenture trustee pursuant to this section 10.3 will be issued (subject to section 10.7) in such denominations and registered in such names as may be requested by each indenture trustee in a writing delivered to the Debtor at least two business days prior to the Effective Date.~~

10.4 **Distributions to Holders of Other Allowed Claims.** The Reorganized Debtor, or such third-party disbursing agents as the Reorganized Debtor may employ in its sole discretion, will make all distributions of cash, ~~Senior Notes and Subordinated Notes~~ required under this Plan, except for distributions made by agent banks or indenture trustees pursuant to sections 10.2 and 10.3, respectively. The Reorganized Debtor and any such third-party disbursing agent will serve as disbursing agents under this Plan without bond, and the Reorganized Debtor and any such third-party disbursing agent may employ or contract with other entities to assist in or make the distributions required by this Plan.

10.5 **Distribution Record Date; Suspension of Transfer of Claims.** As of the Distribution Record Date, the transfer registers for all Existing Debt Instruments maintained by the Debtor or its agents (including agent banks and indenture trustees) shall be closed. The Reorganized Debtor and any third-party disbursing agents (including agent banks and indenture

trustees) shall have no obligation to recognize the transfer of any Existing Debt Instruments occurring after the Distribution Record Date, and shall be entitled to recognize and deal only with holders of record of Existing Debt Instruments as of the Distribution Record Date.

10.6 **Surrender of Existing Debt Instruments.** As a condition precedent to receiving any distribution pursuant to the Plan on account of an Allowed ~~Bank Loan Claim or Allowed~~ Public Debt Claim evidenced by an Existing Debt Instrument, the holder of such Claim shall surrender the applicable Existing Debt Instrument to the indenture trustee in accordance with the indenture for the Public Debt Claims and pursuant to a letter of transmittal furnished by the indenture trustee. All surrendered Existing Debt Instruments shall be marked as canceled in accordance with section 2.10 of such indenture and, notwithstanding anything in such section 2.10 to the contrary, the indenture trustee shall deliver such canceled instruments to the Reorganized Debtor on a quarterly basis (or as may otherwise be agreed by the parties) after the Effective Date, provided, however, that the indenture shall continue in full force and effect until all amounts due thereunder have been satisfied in accordance with section 5.1 of the Plan. The indenture trustee shall provide reports to the Reorganized Debtor, on a quarterly basis after the Effective Date or as agreed from time to time by the parties, identifying the cancelled Existing Debt Instruments.

As a condition precedent to receiving any distribution pursuant to the Plan on account of an Allowed Bank Loan Claim evidenced by an Existing Debt Instrument, the holder of such Claim shall surrender the applicable Existing Debt Instrument to the Reorganized Debtor pursuant to a letter of transmittal furnished by the Reorganized Debtor (either directly or through an agent bank ~~or an indenture trustee~~). Such letter of transmittal shall be accompanied by

instructions for the proper completion, execution and delivery thereof, and shall specify that delivery of such Existing Debt Instrument will be effected, and risk of loss and title thereto will pass, only upon the proper delivery of such Existing Debt Instrument with the letter of transmittal in accordance with such instructions. Such letter of transmittal shall also include, among other provisions, customary provisions with respect to the authority of the holder of the applicable Existing Debt Instrument to act and the authenticity of any signatures required on the letter of transmittal. All surrendered Existing Debt Instruments shall be marked as canceled and delivered to the Reorganized Debtor.

In addition to any requirements under the applicable credit agreement ~~or indenture~~, any holder of an Allowed Claim other than a Public Debt Claim evidenced by an Existing Debt Instrument that has been lost, stolen, mutilated or destroyed shall, in lieu of surrendering such Existing Debt Instrument, deliver to the Debtor or the Reorganized Debtor (a) evidence <sup>Reasonably</sup> satisfactory to the Debtor or the Reorganized Debtor of the loss, theft, mutilation or destruction and (b) such security or indemnity as may <sup>reasonably</sup> be required by the Debtor or the Reorganized Debtor to hold it and its agents harmless from any damages, liabilities or costs incurred in treating such individual as a holder of such Existing Debt Instrument. Any holder of a Public Debt Claim evidenced by an Existing Debt Instrument that has been lost, stolen, mutilated or destroyed shall, in lieu of surrendering such Existing Debt Instrument, comply with the requirements of section 2.9 of the indenture for the Public Debt Claims. Upon compliance with this paragraph by a holder of an Allowed Claim evidenced by an Existing Debt Instrument, such holder shall, for all purposes of this Plan, be deemed to have surrendered such Existing Debt Instrument in accordance with the provisions of this section 10.6.

Any holder of an Existing Debt Instrument that fails to surrender or to be deemed to have surrendered such Existing Debt Instrument within one year after the Effective Date shall have its claim for a distribution pursuant to the Plan on account of the Claim evidenced thereby discharged and shall be forever barred from asserting any such claim against the Reorganized Debtor or its property.

~~10.7 **Fractional Amounts.** The calculation of Senior Notes to be distributed to the holders of Allowed Unsecured Claims may mathematically entitle the holder of such Claim to a fractional interest in such Senior Notes. Notwithstanding such entitlement, all Senior Notes issued by the Reorganized Debtor to holders of Allowed Unsecured Claims pursuant to the Plan will be issued and distributed only in denominations of \$1,000. To the extent any holder would be entitled to a fractional denomination of Senior Notes but for this provision, the denomination of Senior Notes to be issued to such holder shall be rounded downward to eliminate such fractional amount and the Reorganized Debtor shall distribute to such holder, in lieu of such fractional amount, cash in an amount equal to such fractional amount.~~

## ARTICLE ELEVEN

### **MISCELLANEOUS PROVISIONS**

11.1 **Objection to Claims.** Objections to Claims as to which no objection is pending as of the Confirmation Date may be filed solely by the Debtor or the Reorganized Debtor.

11.2 **Survival of Certain Corporate Indemnification Obligations.** Any obligations, rights or agreements of the Debtor to indemnify its past or present officers, directors, and employees pursuant to its Articles of Incorporation, bylaws, board of directors resolutions, and applicable statutes in respect of any Claims, demands, suits, causes of actions or proceedings

**~~EXHIBIT “D”~~**

**~~(to Amended Joint Plan of Reorganization):~~**

**~~SUMMARY OF TERMS OF SENIOR NOTES~~**

**~~EXHIBIT D IS DELETED IN ITS ENTIRETY~~**